

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to
establish Consumer Rights and
Protection Rules Applicable to All
Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON WORKSHOP ISSUES
RE CRAMMING COMPLAINT REPORTING RULES**

Chris Witteman,
Staff Counsel
Joseph Wanzala, Analyst
Paul Phillips, Analyst
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave., Rm. 5129
San Francisco, CA 94102
Phone: (415) 355-5524
Fax: (415) 703-4465
E-mail: wit@cpuc.ca.gov

September 8, 2006

INTRODUCTION

The Division of Ratepayer Advocates (DRA) hereby files its comments about issues identified in two days of workshops on cramming reporting requirements in the above-referenced proceeding. In an August 28, 2006 email, Jim Howard of the Commission's Consumer Protection and Safety Division (CPSD) suggested that workshop participants address these two questions:

- 1) What circumstances would contribute to complaints remaining unresolved beyond 30 days? and
- 2) The relative usefulness of cramming complaint data to CPSD (and the Commission)¹ regarding complaints aged less than 30 days.

DRA will briefly address question (1), and more fully address question (2). In order to response to Commissioner Chong's questions regarding the cost/benefit ramifications of complete complaint reporting,² DRA will discuss what it knows of the *existing* operational abilities of "billing telephone companies"³ and billing aggregators to track complaints and related chargebacks, and to identify their source, i.e., the third party vendor "responsible for generating the charge."⁴ DRA will examine the legal limits of the Commission's ability to eliminate existing reporting requirements. DRA will conclude by discussing why the existing rules are important, and why staff's proposal to limit complaint reporting to those unresolved

¹ Although Mr. Howard's email did not include this parenthesis, the collection of complaint data is not just pertinent to CPSD, but has application throughout the Commission. Commissioners, for example, use complaint data in analyzing proposed new regulations, the effectiveness of old regulations, utility applications, and proposed penalties. DRA, as a separate Division of the Commission, also relies on complaint data in representing ratepayers in various contexts, as it is statutorily authorized to do. See P.U. Code § 309.5.

² August 21, 2006 Transcript, at pp. 4-5.

³ "Billing Telephone Company" is the phrase used by the Legislature in P.U. §§ 2889.9 and 2890. It was defined in D.00-11-015 as "A telephone corporation that bills a subscriber for products and services provided by a third party, including corporate affiliates." This definition clearly encompasses wireless carriers.

⁴ P.U. Code § 2890(d).

after 30 days⁵ would in fact eviscerate the ability of the Commission and other public representatives to detect many types of fraud in a timely fashion.

1) What circumstances would contribute to complaints remaining unresolved beyond 30 days?

While this question may have relevance to general policy concerns of the Commission, and to a general understanding of the “mobile marketplace,”⁶ in a narrow sense it is not germane to the issue of complaint *reporting*. Presumably, no party to this proceeding wants to see cramming (or any other) complaints pending and “unresolved” for 30 days, regardless of circumstance.⁷ Without having obtained full discovery from the industry, DRA’s review and research of the mobile marketplace suggests that one possible reason for a delay of 30 days is that the billing telephone company and/or the third party service or content provider make a conscious decision to try to enforce the sale as processed by the billing telephone company, rather than refund the consumer’s money. See discussion below, particularly section 3 describing the three- or four-way relationship between content provider, aggregator and other middlemen, billing telephone company, and customer.

2) The relative usefulness of cramming complaint data to CPSD regarding complaints aged less than 30 days.

It is in the interests of the carriers as well as consumers that complaint tracking and reporting extend to all complaints, not just those unresolved for 30 days or longer, because – *even where the utility promptly resolves the complaint* – it is not just the utility’s conduct which is at issue here. Section 2889.9(d) requires reporting where the product or service billed on the utility customer’s bill was sold by a *third party*

⁵ August 11, 2006 Staff “Discussion Paper,” at 15.

⁶ See generally www.mmaglobal.com.

⁷ Obviously, the Commission – in its role of market monitor and consumer guardian -- should want to know about such complaints, their number and type, and why these complaints remain unresolved for that length of time.

vendor. There are two reasons to track complaints aged less than 30 days: (1) in order to identify bad actors, particularly here-today, gone-tomorrow vendors, *as soon as possible*; and (2) to make visible schemes where the amounts are small and automatically refunded on customer complaint, but paid by a larger number of unsuspecting victims.

The first reason was put most clearly by Bill Schulte, appearing as a representative of the CTIA (“The Wireless Association”), and also known to this Commission as the former Director of the Commission’s Consumer Protection and Safety Division.⁸ Mr. Schulte headed this Division at a time when the Commission was first grappling with the slamming,⁹ cramming,¹⁰ fraud,¹¹ and other marketing abuses¹² that attended the early days of telephone deregulation, and is thus familiar with the sorts of aggressive marketing that seem to follow new telephone markets. Mr. Schulte stated:

One thing to keep in mind is ... third party ... they deal on volumes, so they deal one month to two months at a time.

They can make enough money in one month and then leave, so that by the time you’re reporting anything (unintelligible) like as you’ve developed your response plan, **you better include something that you can respond very quickly** to or unless they’ll be out of the state or they’ll be out of the country or they’ll be somewhere else.

They’ll come back as another company and as another name. They’ll then use another company to bill for them, that company will go through an aggregator and now you’ve got a chain of events that you can have a hard time

⁸ Then known as the Consumer Services Division, or “CSD.”

⁹ See, e.g., *Investigation of Telmatch*, D.99-10-024 (use of sweepstakes forms to effect customer long-distance switch, no disclosure).

¹⁰ *Investigation of USP&C*, D.01-04-036 (billing aggregator for small and partially fictitious telephone companies caused millions of dollars of unauthorized charges to appear on customer bills) (principals later indicted by U.S. Attorney).

¹¹ See, e.g., *Investigation of Qwest*, D.02-10-059 (forged Letters of Authorization, slamming); see also other slamming cases *CTS*, D.97-10-063, *Heartline*, D.96-12-031, *Cherry* D.96-09-041,

¹² See, e.g., *UCAN v. Pacific Bell and related cases*, D. Decision No. 01-09-058, D.02-02-027 (selling service package as “the Basics” which included optional and expensive options, failure to disclose alternatives); *Greenlining v. Pacific Bell and PBIS*, D.01-04-037 (sale of business voicemail “for only \$21.95/month,” no disclosure of usage charges on every voicemail, charges hidden on bill).

penetrating. So **your response needs to include some type of fast action beyond what reporting requirements are talking about today.**¹³

The mobile market place is expanding exponentially, with little or no public oversight. Pushing products and services through wireless devices to youth¹⁴ and minorities¹⁵ is being touted as the new marketing juggernaut. *See, e.g.,* www.mmaglobal.com. Indeed, all one needs is a website to become a provider of cell-phone compatible services and products. *See, e.g.,* www.ringtone.com (ringtones, wallpaper); <http://www.mixxer.com> (ringtones, games, etc); www.jumbuck.com (chat, social); www.mobilestreams.com/channels_content_portfolio.asp (entertainment, games).¹⁶ *See also* discussion under Section 3 below about the operational realities of the “mobile marketplace.” The opportunities for fraud are obvious and ubiquitous in this area, and even commercial marketers are aware of these problems.¹⁷ DRA staff uncovered evidence suggesting that the carriers, and the “mobile marketplace” in general, are also aware they are not doing enough to provide customer service sufficient to the challenge of this new environment.¹⁸

¹³ Transcript, page 66 (emphasis added). Mr. Schulte is identified in the transcript as “Sholty.”

¹⁴ *See, e.g.,* Waxberg Consulting, “Location Based Services and the Young Adult Market,” at <http://mmaglobal.com/modules/wfsection/article.php?articleid=524>

¹⁵ *See, e.g.,* M:Metrics, “A Comparison of Mobile Content Consumption Between Hispanic and the Total Population of Mobile Subscribers”, found at <http://mmaglobal.com/modules/wfsection/article.php?articleid=531>.

¹⁶ DRA’s investigation leads it to believe that many of these content providers are located in Europe, Australia, and possibly other continents. Although this is a global marketplace, not all carriers partner with all content providers.

¹⁷ *See* “Code of Conduct for Mobile Marketing,” found at <http://mmaglobal.com/modules/content/index.php?id=5>.

¹⁸ *See* “What do Wireless Data Users Want? A Study of Customer Service Challenges Facing Providers of Wireless Data Services,” a study by the Detecon consulting group (a subsidiary of T-Mobile) on customer service needs for wireless data users, and designed to be “a research tool for service providers to better understand customers needs...” www.deteconamericas.com/pdf/Wireless%20CRM%20Exec.Summary%20v1.0.pdf. At page 7, the Detecon report described “Major gaps in Customer Care being delivered”:

Multiple Contacts Required; 34% of users have never solved a problem with a single contact

3) What we know of the operational ability of “billing telephone companies” and billing aggregators to track complaints.

The billing telephone companies¹⁹ have claimed that it is impossible or enormously expensive to track consumer complaints at a customer service level. Similarly, Commissioner Chong asked about the appropriate cost-benefit balance to be applied to cramming complaint reporting.²⁰ As noted above, DRA believes that such reporting requirements have already been created and are being used in the industry, because the industry needs these capabilities for its own business purposes.

In order to understand more about the capabilities of billing telephone companies to track consumer complaints generally, and cramming complaints in particular, DRA drafted and served a set of data requests which addressed these topics, particularly the relationships between the billing telephone company and the billing agents and third party vendors who currently are allowed to place charges on utility consumer bills.²¹ Because some of the carriers submitted responses to

Low satisfaction with IVR Design, 1 in 5 users sees IVR as a major area for improvement

Wireless Growth, together with fierce competition, drives service providers to seek more cost-effective Customer Care solutions which can impact customer satisfaction if not delivered properly.

The general thrust of the report is that "as the wireless data market becomes more competitive, service providers will need to make customer care a prime concern." DRA analysts noted in this regard that at least one carrier reported use of an IVR software to direct customer calls, which frustrates consumers yet could easily include complaint categorization in its logic tree. On the one hand, the Detecon report suggests that given the results of this study reporting low customer satisfaction with IRV, their customer service process cannot fairly claim to capture reliable data on customer complaints. On the other hand, the IRV system must, as a matter of course, capture a fair amount of objective data about the nature of customer calls, making the carrier's claims that their tracking system are 'not necessarily' indicative of the nature of their calls fairly dubious.

¹⁹ The voices of billing aggregators and third party service providers, although within the scope of Sections 2889.9 and 2890 of the Public Utilities Code, were largely absent from the workshops held by Commissioner Chong and CPSD.

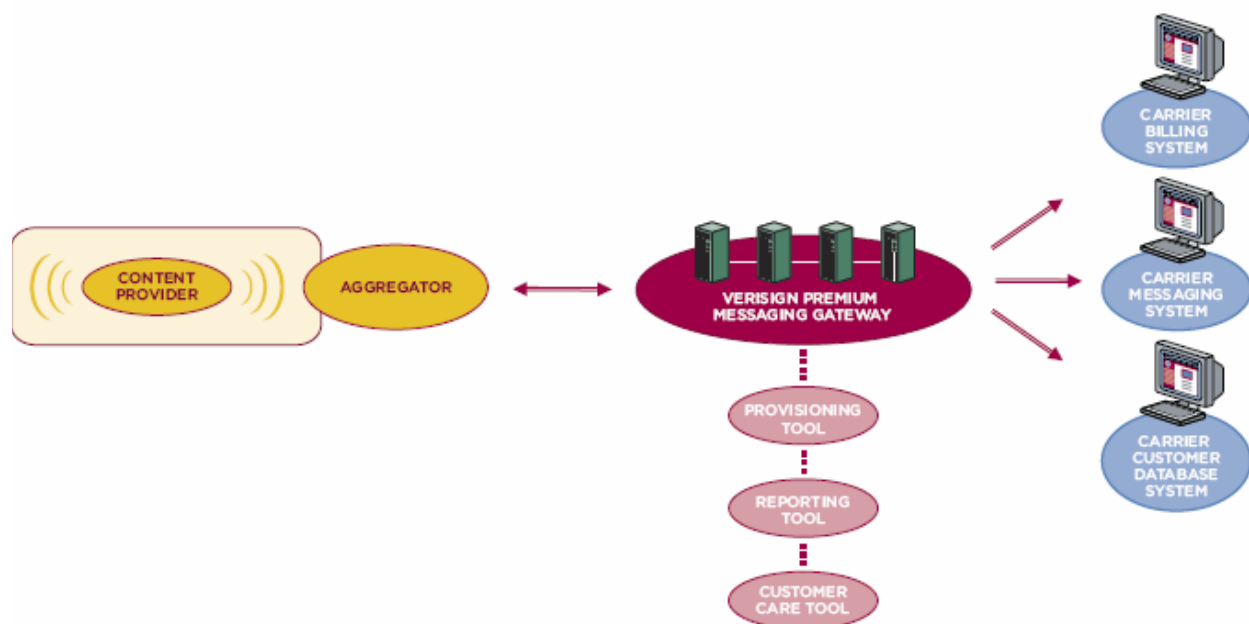
²⁰ August 21, 2006 Transcript, at 4-5.

²¹ The Commission in general, and the Division of Ratepayer Advocates in particular, have plenary authority under Sections 309.5, 311, 314, 581-82, and 584 of the California Public Utilities Code to require utilities to provide to the Commission information relating to their operations in California.

DRA data requests on a confidential basis, DRA will not discuss with identifying detail the individual responses, but will try to convey what the aggregate impression of the responses was,²² with reference on occasion to publicly available websites.

Although the carriers supplied only partial and incomplete responses to DRA's data requests, the picture that emerges is that of a sophisticated four-way relationship (or "ecology" as a leading industry association calls it) between customer, billing telephone company, billing aggregator, and service provider. In lieu of describing the carriers' responses in detail, the reader can look at the chart found on the webpage of Verisign, one of the billing aggregators or similar intermediaries that plays a central role in this industry. Its website describes an industry structure as follows:

Network Architecture



See <http://www.verisign.com/static/002639.pdf#search=%22billing%20aggregator>, showing Verisign's connections to "Carrier Billing System," "Carrier Messaging System," and "Carrier Customer Database System." This industry flow chart,

²² If requested, DRA can provide specific responses to decisionmakers, under seal.

however, omits the one essential party in the “mobile marketplace,” and that is the customer. If we include the customer, the flow looks like this:

3d party provider \leftrightarrow aggregator \leftrightarrow Verisign \leftrightarrow Carrier \leftrightarrow Customer.

These arrows are two-way arrows because product flows left to right, and revenue flows right to left. As presented by Verisign, and consistent with what we learned from the carriers, the companies involved in the mobile marketplace are all interlocked and *need* -- as a business imperative -- complaint and/or chargeback reporting between and among themselves in order to true up the accounting between the third party content provider and the carrier which collects the money.

To understand this concretely, let us envision a hypothetical near at hand to any parent of teenage children. The third party provider (let us assume it is “ringtones.com”) sells the service from its website. Let us also posit the 15 year old daughter of the subscriber, who is able to “text” the required code provided by ringtones.com back to ringtones.com, thereby ordering a song to use as her ringtone – say Snoop Dog’s “Gin and Juice.”²³ With this “order” in hand, then, “ringtones.com” sends “Gin and Juice” to the 15 year old’s cell phone, perhaps through the Verisign “Premium Portal,” and the Carrier’s Messaging System; the \$2.95 or \$9.95 monthly charge (and it is a *monthly* continuing subscription charge, although this is not clearly disclosed on www.ringtones.com homepage) goes to the Carrier Customer (billing) Database and then to the father’s bill. When the carrier-

²³ “Gin and Juice” is in fact one of the most popular downloads on ringtones.com. See www.ringtones.com or www.us.ringtones.com. “Gin and Juice” is not atypical of material available for download to the cellphone. DRA’s analysts have found much content that – while allegedly “edgy” and most probably First Amendment protected – might be considered inappropriate for teenage or younger users of cell phones. Yet, the content provider sometimes targets precisely those customers. See, e.g., “Suicide Squirrels” at http://www.mobilestreams.com/channels_content_portfolio.asp (“Due to its cute edginess and carefully selected distinctive background music, the property appeals to the young mobile target group.”); “Cat Bastard” at *Id.* (“Cat Bastard is a cat and - well, something of a bastard ... doesn't like dogs ... on a mission to take 'em out, one by one... a fresh cartoon series that's perfectly suited as an up-to-date mobile video content. Its short 30 sec. episodes are wild and comical, and the content is appealing to a young 2.5 and 3G audience ... edgy, gory, and hugely funny!”); “Bunny Kill” at *Id.* (The hero of ‘Bunnykill’, Snowball, is a “cute bunny slash fighting machine”).

acting pursuant to a billing and collection agreement with either ringtones.com or with the aggregator or Verisign -- inserts a line item on the father's bill, it charges the third party content provider for that service, but credits the balance to the vendor's account. When the irate father calls to complain about a monthly charge for "Gin and Juice," the billing telephone company will either immediately credit the father's bill and remove that feature,²⁴ or will decide to stand pat and/or kick the matter over to the billing aggregator or vendor. When customer credits are made, it is in the billing telephone company's interest to track these credits and to charge them back to the third party provider. This chargeback accounting, then, becomes a proxy for complaint reporting.

DRA has found evidence that a perhaps even more comprehensive complaint reporting mechanism exists. At least one carrier provided a form of contract that allows the carrier to terminate services to the third party vendor in the event that complaints against that vendor exceed a certain threshold. This indicates that another system capable of tracking complaints already may be in existence, one more precise than the chargeback proxy.

The conscientious carrier may be concerned that bad third party vendors could tarnish its reputation; the less conscientious carrier may be concerned only about the bottom line (and would like to debit the third party vendor's account for money refunded to consumers). *In either case*, there is a compelling inference that reporting and/or chargeback mechanisms are in place. Further supporting this inference is the description on Verisign's website of "advanced reporting tools" that allow both the vendor and (presumably) the carrier to view "real time performance data," and -- this is key -- that combine data from customer service and customer billing databases. ²⁵

²⁴ At least one of the carriers told us that in the situation above, it would refund the charge as a matter of course. When such a refund is made, that in many cases generates a "chargeback" to the third party vendor.

²⁵ <http://www.verisign.com/static/002639.pdf#search=%22billing%20aggregator>. Carrier often have represented to Commission staff that they are unable to provide complete complaint

DRA relies in part on inference here, supported by information harvested from the Internet and other publicly available sources, because the carriers' data responses, even those submitted confidentially, failed to provide complete data about complaint reporting capabilities.²⁶ The bottom line is two-fold: (1) the carriers did not provide sufficient information to allow DRA to understand their current complaint tracking practices and capabilities; and (2) even on this incomplete record, it is clear that carriers have the ability, and even the incentive, to track complaints if they decide to do so. As observed at the second workshop, and as confirmed by Verisign, the interaction between vendor, middlemen, and carrier is all carried out digitally, and one can program the computers and databases involved to deliver the reports that both the Commission and industry need.²⁷

4) Legal limits to the Commission's ability to eliminate or weaken existing cramming reporting requirements.

The California Legislature has commanded the Commission to:

establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.

P.U. Code § 2889.9(d) (effective January 1, 1999) (emphasis added). The Legislature specifically linked this statute to P.U. Code § 2890. Neither the Commission nor the

reporting because their customer service and billing database computers do not "talk to each other." Verisign shows that this need no longer be an impediment.

²⁶ At the first workshop, Commissioner Chong opined that DRA's data requests were overbroad. Except for Sprint, however, no party engaged DRA in a meaningful attempt to more precisely define what was at issue, although DRA invited all carriers to do so. Instead, responses consisted largely of boilerplate objections.

²⁷ August 21, 2006 Transcript, at 59-61.

billing telephone companies and other industry representatives participating in this process can now deny that the clear legislative intent of this statute was to protect consumers from all billing and marketing abuses associated with the newly deregulated telephone marketplace.²⁸ The locus of protection is the consumer's telephone bill. All charges on that bill have to be "authorized" by the subscriber, clearly stated, and identified by their originating party.²⁹

We should stop a moment here and note that Section 2889.9 (d) solves some of the definitional problems noted in the Staff "Discussion Paper." Thus, the statute *is not limited* to "cramming" complaints about "unauthorized" billing for third party services. It includes *all* complaints "regarding" the billing for third party services.

Nor is there any "thirty-day" limitation written into the statute. In the absence of any time-limiting or other limiting adjective applied to "reports of complaints," the statute must be read to require the reporting of all complaints regarding the billing for third party services.³⁰ Indeed, this is how the Commission read Section 2889.9(d) in the year 2000. Pursuant to the statute, the Commission promulgated rules which required *all* billing telephone companies (and aggregators) to report *all* complaints related to third-party services. These rules, issued pursuant to statute, have been in place since 2000:

²⁸ Staff's "Discussion Paper," *supra*, as well as D.06-03-013, both acknowledge this legislative intent: "The Legislature and this Commission have made it clear that billing telephone companies, service providers, and billing agents and any third parties involved in the billing 'food chain' share in the responsibility that consumers' phone bills only include authorized charges. D.06-03-013 states that, 'P.U. Code §§ 2889.9 and 2890 were enacted in order to deter cramming and clarify related rights and remedies available to California consumers. The Legislature directed that these laws be read together. The Legislature stipulated that P.U. Code §§ 2889.9 and 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber's phone bill. Thus the Commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction'." "Discussion Paper," at 13.

²⁹ P.U. Code § 2890(d).

³⁰ Thus the statute does not allow the Commission to pick and choose which complaints it can require reported: only complaints made on a Monday, for instance; or complaints that were escalated to the office of the President; or complaints more than 30 days old.

Records of Billing Disputes: Every billing telephone company shall maintain accurate and up-to-date records of all customer complaints made to or received by it for charges for products or services provided by a third party, including corporate affiliates. Such records shall be retained for three years. Every billing agent shall maintain accurate and up-to-date records of all customer complaints regarding charges billed through a billing telephone company made to or received by it. In the case of billing telephone companies, the records shall also include information on all consumer complaints received involving entities that bill directly or indirectly on the billing telephone company's bill. In the case of billing agents, the records shall also include all consumer complaints received for service providers that use the billing agent to bill for the service provider on the telephone corporation bill.³¹

This rule has not been vigorously enforced, and the wireless carriers apparently now claim that it never had application to them, because the enacting Decision was not properly served on them.³² All persons, however, including corporate persons, are charged with knowledge of the law, and "law" includes statutes and regulations.³³ Although unenforced, the rule remains necessary if the Commission is to fulfill its constitutional and statutory duties to protect consumers.³⁴

The question now, however, is forward looking: *should* the wireless and other carriers comply with the rules as written; or should the Commission change that rule, and if it changes the rule, can the Commission materially depart from the

³¹ Rule 3 of Appendix A to Commission Decision 00-11-015.

³² In the responses of carriers reviewed to date, DRA found objections and refusals to respond to the DRA data request inquiring into the carriers' basis for non-compliance with D.00-11-015. Carriers at the workshop, apparently off the record, did assert that non-service was the basis of their argument that the rules did not apply to them.

³³ Cf. *People v. McKale* (1979) 25 C.3d 626, 632 (mobile home park regulations); *Hewlett v. Squaw Valley* (1997) 54 C.A.4th 499, 526 (CDF interpretations regarding timber cutting); *People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 C.A.3d 509, 528-30 (nursing home regulation).

³⁴ California Constitution, Article 12; P.U. Code §§ 451, 2889.9, 2890, *inter alia*.

parameters set by the Legislature in the statute? What sort of factual showing would be needed to justify a change in the rule, as staff now proposes?³⁵

DRA believes that the Commission may contravene the letter and intent of Section 2889.9(d) by inserting into the statute's reporting requirement a time-limiting factor not contemplated by the Legislature. If the Commission does make this change, it should have at a minimum a solid factual basis and record on which to proceed. For this reason, DRA believes the Commission should embrace and enforce the data requests propounded by DRA, and further investigate the need and feasibility of complaint reporting as well as existing marketplace realities. Indeed, whether or not the existing rules are to be repealed and changed, the Commission should have a better understanding of how the mobile marketplace functions, what the potential dangers are to consumers, and what reporting tools already exist in the industry.

5) Why Complete Complaint Reporting Is Important.

As indicated above, content provision to mobile phone devices is an exploding international phenomenon, with vendors from around the world vying to reach the customer's phone. There is at least one intermediary between such content vendors and the mobile phone carrier. Past experience³⁶ teaches that the customer is often confused as to who has his money and who is ultimately responsible for the charges on his bill. Consider the following, from the "consumer information" on aggregator m-Qube's website:

Who is m-Qube, I never signed up for anything with m-Qube?

m-Qube is a company that helps mobile content providers distribute and bill for their products through wireless carriers. Simply put, when you visit certain sites—on the web or on your handset—and purchase a ringtone, a ringtone subscription or other mobile content, some of those sites use m-Qube's services to link their site with your wireless carrier so that your purchase shows up on your mobile bill. In many cases you will not see the

³⁵ August 11, 2006 Staff "Discussion Paper," at 15.

³⁶ See footnotes 8-11 above, and accompanying text.

name of the content provider you signed up with on your wireless carrier's bill. They often just put m-Qube.³⁷ In all cases, the mobile content vendor is responsible for answering any questions regarding billing and they are the quickest way to resolve any concerns.

Why does m-Qube show up on my Wireless bill?

This is because the billing systems of some wireless carriers are not able to accept the merchant name from the m-Qube platform and display it on your bill—instead, they simply display our name. If this is the case, we can help you!

Why does it take 2 to 3 business days to remove me?

Since m-Qube is not the company selling the content or billing you for the content, we work with the actual merchant or content provider to resolve your issue. We use your mobile number to determine which content providers you signed up with and the merchant processes the opt-out request.

How do I get a refund?

You may pursue any claims for refunds or credits with your wireless carrier or the merchant. You should call your wireless carrier first. If you fill out our support form provided above, and give us a valid email address we will send you two emails. The first acknowledges that we have received your request and the second provides information about how to contact the merchant.

My carrier says that m-Qube will provide a refund, what do I do?

m-Qube does not provide refunds or credits. It is the merchant that is actually billing you for the content. You must pursue any claims for refunds or credits with your carrier for the merchant.³⁸

In a perfect world, this industry could police itself. But this is not a perfect world, and the potential for conflict is obvious here. It does not take much to imagine a scenario with the carrier, aggregator, and content vendor all pointing at each other when the customer questions a charge for “digital chocolate”³⁹ or the like on his bill. Commissioner Bohn is right when he says that this is a situation with multiple potential “defendants” (or respondents in an administrative setting),⁴⁰ and the

³⁷This may be a violation of P.U. Code §2890 (d).

³⁸ <http://www.m-Qqube.com/html/utility/help.html>. According to m-Qube's website, it was recently purchased by Verisign.

³⁹ <http://www.digitalchocolate.com/games>.

⁴⁰ August 21, 2006 Transcript, at p. 61.

Commission is ill-advised to deny itself, other public agencies, and by extension the public itself⁴¹ the very important tool of comprehensive complaint tracking and reporting. DRA itself regularly uses complaint reporting in its analysis and defense of ratepayer interests,⁴² and a limitation of that complaint reporting to complaints older than 30 days would compromise DRA's ability to represent ratepayers.⁴³

CONCLUSION

There is a tsunami of new services, products, and custom-targeted marketing bearing down on California cell phone owners. No other public agency has the experience or expertise to monitor and (if necessary) police this burgeoning marketplace. Cell phones are part and parcel of the public telephone network that has traditionally been the province of the PUC.⁴⁴ The Commission is charged with protecting all ratepayers who use this system, and with the integrity of the system as a whole. Given its constitutional and statutory duty, the Commission cannot now

⁴¹ Section 2889.9(d) gives specifically to this Commission the duty of requiring and receiving 3d party complaint reporting. As noted above, accurate and comprehensive complaint reporting benefits not only CPSD, but the Commission as a whole, and may also be very helpful to the California Attorney General, district attorneys, and other public agency attorneys charged with protecting the public. DRA itself has legitimate information needs.

⁴² DRA's use for data may differ slightly from CPSD's. DRA's experience indicates that data about sales and complaints in the "early stages" may be useful to DRA in spotting trends and understanding market behavior. Systemic conduct that harms consumers may be invisible in individual complaints, and sometimes even in single company complaints, but become apparent to DRA when repeated across a number of companies.

⁴³ Even (indeed, especially) when it comes to small amounts which are refunded on demand, comprehensive complaint reporting is crucial. If complaint reporting was limited to those claims unresolved after thirty days, or limited by amount, the Commission would completely miss fraudulent campaigns, perhaps for inexpensive text charges of \$.50 or \$1.00, where the carrier immediately refunds the charge. But for every refund, how many customers pay the \$.50 or \$1.00 rather than waiting in a phone queue for 20 minute? DRA's point is that this is an undesirable practice by a carrier or a third party, but a small charge and a no-questions refund policy make it an almost undetectable practice

⁴⁴ This system was traditionally referred to as the "public switched telephone system." Although many of the switches have been replaced by routers, the system still runs in large part over wires paid for by ratepayers and necessary to the integrity of the system at large. Wireless telephony is just the "fuzz on the peach," it is just a last mile technology. From the wireless cell tower, the telephone transmission typically goes into a T-1 or larger transport line to the central office of the local carrier, and from there into the telephone network.

put on empirical blinders and say that it only wishes to receive part of the complaints generated by abuses among purveyors of telephone-related products and services.

Indeed, just the opposite should occur: the Commission should demand the most accurate and comprehensive complaint reporting possible from the billing telephone companies, billing aggregators, and third party providers identified in Public Utilities Code §§ 2889.9 and 2890. Commissioner Chong has identified “cost benefit” analysis as a touchstone of her thinking, and DRA has shown above that the costs of such complaint reporting are a necessary business expense, not a regulatory burden. As discussed above, DRA believes that the telephone utilities have much more advanced reporting capabilities than have been disclosed to the Commission.

In view of the fact that the Commission has repealed many of the rules designed to protect consumers on the assumption that the marketplace would police itself,⁴⁵ it behooves the Commission to vigilantly monitor that marketplace in order to assure itself that its assumptions about marketplace discipline are, in fact, correct.

Respectfully submitted,

/s/ CHRIS WITTEMAN

Chris Witteman, Attorney
Legal Division
Joseph Wanzala, Analyst
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave., Rm. 5129
San Francisco, CA 94102
Phone: (415) 355-5524
Fax: (415) 703-4465
E-mail: wit@cpuc.ca.gov

September 8, 2006

⁴⁵ D.05-01-058; D.06-06-013.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of each document
**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON
WORKSHOP ISSUES RE CRAMMING COMPLAINT REPORTING RULES”** in
R. 00-02-004 by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on September 8, 2006 at San Francisco, California.

/s/ NANCY SALYER
Nancy Salyer

N O T I C E

Parties should notify the Process Office, Public Utilities
Commission, 505 Van Ness Avenue, Room 2000, San Francisco,
CA 94102, of any change of address and/or e-mail address to
insure that they continue to receive documents. You must indicate
the proceeding number on the service list on which your name
appears.
